Supreme Court, U.S.
FILED
OCT 12 1995
OFFICE OF THE CLERK

No. 95-380

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1995

RONALD ANDOLSEK,
Petitioner,

v.

CITY OF KIRTLAND, and ADMINISTRATOR, BUREAU OF WORKERS' COMPENSATION, and INDUSTRIAL COMMISSION OF OHIO,
Respondents.

On Petition for Writ of Certiorari to the Court of Appeals,
Eleventh Appellate District
Lake County, Ohio

BRIEF IN OPPOSITION

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BRIEF IN OPPOSITION

STATEMENT OF THE CASE

On March 23, 1992, Petitioner Ronald Andolsek filed an application for workers' compensation benefits under the Ohio Workers' Compensation Act. The claim was filed as an occupational disease claim for a psychiatric condition, but did not allege a contemporaneous physical injury or an allowable occupational disease.

According to the application for benefits, Petitioner was the investigative officer on the "Kirtland Cult Killings." Petitioner claims that, as a result of the constant stress involved in this investigation, he became stressed and depressed resulting in post-traumatic stress disorder, depression and burn out.

Petitioner's application for benefits was subsequently heard and disallowed administratively on the basis that he did not sustain an occupational disease and/or injury in the course of and arising out of his employment. See R.C. § 4123.01(C)(1) and 4123.68.

Subsequently, on May 20, 1993, Petitioner filed a Notice of Appeal and Complaint in the Court of Common Pleas for Lake County, Ohio against the Respondents, Administrator of the Ohio Bureau of Workers' Compensation, the Industrial Commission of Ohio, and the City of Kirtland. The Complaint alleged that Petitioner was employed as a police officer by the City of Kirtland on or about May 21, 1990, and while in the performance of his duties contracted post-traumatic stress disorder, depression, and other psychiatric conditions.

Petitioner claimed neither a physical injury resulting

from work-related stress nor a mental condition arising from a compensable work-related physical injury or occupational disease. Rather, Petitioner alleged in his complaint that he developed a mental disorder occasioned by job-related stress and that such a condition is compensable as an occupational disease. Respondents, Administrator and the Industrial Commission, disagreed and, in their answer, denied that any psychiatric condition resulted from Petitioner's employment. Thereafter, the Lake County Court of Common Pleas granted Respondents' motion for judgment on the pleadings.

On November 14, 1994, the Eleventh District Court of Appeals affirmed the trial court's dismissal of Petitioner's cause of action against Respondents. The lower court found that the exclusion of psychiatric injuries without a contemporaneous physical or traumatic injury from coverage under the Workers' Compensation Act does not violate Petitioner's constitutional rights.

Petitioner then appealed to the Ohio Supreme Court which, on May 3, 1995, declined to hear the case. On June 14, 1995, Petitioner's motion for reconsideration was also denied by the Ohio Supreme Court.

REASONS FOR DENYING THE WRIT

As an initial matter, it is important to point out that Petitioner has not even alleged, much less established, that the lower courts are divided on this issue. Indeed, Petitioner relies solely on Ohio cases in arguing that the Court should review this dispute.

What is worse, even the arguments that Petitioner does make are misleading. First, Petitioner contends that Ohio Revised Code § 4123.74 completely bars workers with psychiatric conditions from seeking a remedy outside the workers' compensation system. This is a misstatement of the law. In actuality, the statute protects complying employers from liability in damages, at common law or by statute, where a worker's injury or condition arises out of employment; it does not bar actions in intentional tort. R.C. § 4123.74.

Second, Petitioner maintains that it is undisputed he suffered from a work-related psychiatric condition. On the contrary, Respondents have disputed, and continue to dispute, whether Petitioner's psychiatric conditions were in fact the result of his employment. In their answer at the trial court level, and throughout the appellate process, the Administrator and the Industrial Commission denied that any psychiatric condition resulted from Petitioner's employment.

Petitioner's ensuing arguments, that the Workers' Compensation law violates equal protection and that the state has no rational basis for creating such a statutory classification, are also without merit. The denial of coverage for mental disorders based solely upon stress does not violate equal protection of the law. This Court has determined that

legitimate state interests can be and are sufficient to permit a state to establish a classification scheme in areas of economic and social legislation. *Geduldig v. Aiello* (1974), 417 U.S. 484. In *Dandridge v. Williams* (1970), 397 U.S. 471, the United States Supreme Court addressed the issue of classification schemes in social and economic legislation. The Court held that the Equal Protection Clause does not require a state to choose between attacking every aspect of a problem or not attacking the problem at all. As the court noted at 397 U.S. at pg. 485:

> In the area of economics and social welfare, a State does not violate the Equal Protection Clause merely because the classifications made by its laws are imperfect. If the classification has some "reasonable basis," it does not offend the Constitution simply because the classification "is not made with mathematical nicety or because in practice it results in some inequality." ... "The problems of government are practical ones and may justify, if they do not require, rough accommodations--illogical, it may be, and unscientific."..."A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it."...

Plainly, there are ample legitimate grounds for this statutory scheme: (1) the state has a legitimate interest in maintaining the self-supporting nature of its Workers' Compensation Fund; (2) the state has a legitimate interest in distributing the available resources to the disabilities determined by the state to be covered rather than to cover all disabilities inadequately; and (3) the state has a legitimate

interest in maintaining a contribution rate at a level that will not unduly burden participating employers. See, *Connors v. Sterling Milk Co.* (1993), 98 Ohio App.3d 711 (dismissed as having been improvidently allowed in 72 Ohio St.3d 1208). This test has been applied in other Ohio appellate districts which have upheld Ohio's ban on purely mental injuries. *Andolsek v. Kirtland* (1994), 99 Ohio App.3d 333; *Neil v. Mayfield* (July 22, 1988), Montgomery App. No. CA 10881, unreported; *Fields v. City of Youngstown* (May 30, 1989), Mahoning App. No. CA 89, unreported; *Duty v. Connor* (1982), Cuy. App. No. 44164, unreported. Hence, there exist several "reasonable bases" to support the state's classification scheme.

Consequently, Chapter 4123 of the Ohio Revised Code does not violate the Equal Protection Clause of the Fourteenth Amendment. The State of Ohio has a legitimate interest in the maintenance and fair distribution of its workers' compensation fund, and a reasonable basis for denying coverage to workers who allege mental conditions without a contemporaneous physical injury or previously allowed occupational disease.

CONCLUSION

Wherefore, for the above-stated reasons, the Respondents request that this court deny the petition for a writ of certiorari.

Respectfully submitted,

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